

111TH CONGRESS  
1ST SESSION

# S. 203

To amend the Immigration and Nationality Act to modify the requirements for participation in the visa waiver program and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2009

Mrs. FEINSTEIN (for herself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to modify the requirements for participation in the visa waiver program and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Strengthening the Visa  
5       Waiver Program to Secure America Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) PROGRAM COUNTRY.—The term “program  
9       country” means a country designated as a program

1 country under section 217(c)(1) of the Immigration  
2 and Nationality Act (8 U.S.C. 1187(c)(1)).

3 (2) SECRETARY.—Except as otherwise provided,  
4 the term “Secretary” means the Secretary of Home-  
5 land Security.

6 (3) VISA WAIVER PROGRAM.—The term “visa  
7 waiver program” means the visa waiver program  
8 carried out under section 217 of the Immigration  
9 and Nationality Act (8 U.S.C. 1187).

10 **SEC. 3. ENFORCEMENT OF REQUIREMENT TO REPORT**  
11 **LOST OR STOLEN PASSPORTS.**

12 (a) ENFORCEMENT OF EXISTING REQUIREMENT.—  
13 Not later than 180 days after the date of the enactment  
14 of this Act, each program country shall have in effect an  
15 agreement with the United States as required by section  
16 217(c)(2)(D) of the Immigration and Nationality Act (8  
17 U.S.C. 1187(c)(2)(D)).

18 (b) FAILURE TO AGREE TO REPORT.—

19 (1) SUSPENSION FROM THE PROGRAM.—If a  
20 program country does not meet the requirements of  
21 subsection (a), the Secretary, in consultation with  
22 the Secretary of State, shall immediately suspend  
23 the program country’s participation in the visa wai-  
24 ver program.

1           (2) RESTORATION TO THE PROGRAM.—With re-  
2       spect to a country that is suspended from partici-  
3       pation in the visa waiver program under paragraph  
4       (1), the Secretary shall restore the country’s partici-  
5       pation on the date that the Secretary determines  
6       that the country meets the requirements of para-  
7       graph (1).

8       (c) LIMITATION ON NEW PROGRAM COUNTRIES.—  
9       Notwithstanding any other provision of law, the Secretary  
10      may not designate a country as a program country until  
11      after the date that the Secretary certifies to Congress that  
12      the requirements of subsection (a) have been met.

13   **SEC. 4. ENFORCEMENT OF REQUIREMENT FOR PERIODIC**  
14                   **EVALUATIONS OF PROGRAM COUNTRIES.**

15      (a) ENFORCEMENT OF EXISTING REQUIREMENT.—  
16      Not later than 1 year after the date of the enactment of  
17      this Act, the Secretary, in consultation with the Secretary  
18      of State, shall evaluate under section 217(c)(5)(A) of the  
19      Immigration and Nationality Act (8 U.S.C.  
20      1187(c)(5)(A)) each program country that was designated  
21      as a program country prior to January 1, 2009. Such eval-  
22      uation shall include the visa overstay rate for each pro-  
23      gram country for the 1-year period ending on the date of  
24      the enactment of this Act.

1 (b) VISA OVERSTAY RATE DEFINED.—In this sec-  
2 tion, the term “visa overstay rate” has the meaning given  
3 that term in section 217(c)(8)(C) of the Immigration and  
4 Nationality Act (8 U.S.C. 1187(c)(8)(C)), as amended by  
5 section 6.

6 (c) FAILURE TO COMPLY WITH PROGRAM REQUIRE-  
7 MENTS.—

8 (1) SUSPENSION FROM THE PROGRAM.—If the  
9 periodic evaluation prepared under subsection (a)  
10 shows that a program country has a visa overstay  
11 rate that exceeds 2 percent, the Secretary, in con-  
12 sultation with the Secretary of State, shall imme-  
13 diately suspend the program country’s participation  
14 in the visa waiver program.

15 (2) RESTORATION TO THE PROGRAM.—With re-  
16 spect to a country that is suspended from participa-  
17 tion in the visa waiver program under paragraph  
18 (1), the Secretary shall restore the country’s partici-  
19 pation on the date that the Secretary determines  
20 that the country’s visa overstay rate does not exceed  
21 2 percent.

22 (d) LIMITATION ON NEW PROGRAM COUNTRIES.—  
23 Notwithstanding any other provision of law, the Secretary  
24 may not designate a country as a program country until

1 after the date that the Secretary certifies to Congress that  
 2 the requirements of subsection (a) have been met.

3 **SEC. 5. ARRIVAL AND DEPARTURE VERIFICATION.**

4 (a) REQUIREMENT FOR VERIFICATION.—

5 (1) IN GENERAL.—Subparagraph (A) of section  
 6 217(c)(8) of the Immigration and Nationality Act (8  
 7 U.S.C. 1187(c)(8)) is amended—

8 (A) in clause (i)—

9 (i) by striking “can verify” and insert-  
 10 ing “verifies”;

11 (ii) by inserting “arrival and” before  
 12 “departure”; and

13 (iii) by inserting “entry and” before  
 14 “exit”; and

15 (B) in clause (ii) by inserting “entry and”  
 16 before “exit”.

17 (2) CONFORMING AMENDMENT.—Subparagraph  
 18 (C) of such section 217(c)(8) is amended by insert-  
 19 ing “entry and” before “exit”.

20 (b) LIMITATION ON NEW PROGRAM COUNTRIES.—

21 Notwithstanding any other provision of law, the Secretary  
 22 may not designate a country as a program country until  
 23 after the date that the Secretary certifies to Congress that  
 24 the requirements of clause (i) of subsection (c)(8)(A) of

1 section 217 of the Immigration and Nationality Act, as  
2 amended by subsection (a)(1), are met.

3 (c) AUDIT.—

4 (1) REQUIREMENT TO CONDUCT.—Not later  
5 than 180 days after the date that the certification  
6 described in clause (i) of subsection (c)(8)(A) of sec-  
7 tion 217 the Immigration and Nationality Act (8  
8 U.S.C. 1187), as amended by subsection (a)(1), is  
9 submitted to Congress, the Comptroller of the  
10 United States shall conduct an audit of the travel  
11 authorization system described in subsection (h)(3)  
12 of that section and submit a report on such audit to  
13 Congress.

14 (2) ELEMENTS.—The report by paragraph (1)  
15 shall include—

16 (A) a description of the data collected by  
17 such system;

18 (B) the number of individuals who were  
19 identified by such system as being in violation  
20 of the immigration laws, disaggregated by coun-  
21 try; and

22 (C) an explanation of any problems in im-  
23 plementing such system encountered during the  
24 early stages of implementation to better identify

1 high-risk travelers and countries of origin of  
 2 such travelers.

3 **SEC. 6. VISA OVERSTAY RATES.**

4 Subparagraph (C) of section 217(c)(8) of the Immi-  
 5 gration and Nationality Act (8 U.S.C. 1187(c)(8)), as  
 6 amended by section 5(a)(2), is further amended—

7 (1) in clause (i), by striking the period at the  
 8 end of the first sentence and inserting “, except that  
 9 in no case may a maximum visa overstay rate exceed  
 10 2 percent.”;

11 (2) by redesignating clause (iii) as clause (iv);

12 (3) by inserting after clause (ii) the following:

13 “(iii) DATA COMPILATION.—The Sec-  
 14 retary of Homeland Security shall compile  
 15 data from all appropriate databases to de-  
 16 termine the visa overstay rate for each  
 17 country. Such databases shall include—

18 “(I) the Advanced Passenger In-  
 19 formation System (APIS);

20 “(II) the Automated Fingerprint  
 21 Identification System (IDENT);

22 “(III) the Central Index System  
 23 (CIS);

1 “(IV) the Computer Linked Ap-  
 2 plication Information Management  
 3 Systems (CLAIMS);

4 “(V) the Deportable Alien Con-  
 5 trol System (DACS);

6 “(VI) the Integrated Automated  
 7 Fingerprint Identification System  
 8 (IAFIS);

9 “(VII) the Nonimmigrant Infor-  
 10 mation System (NIIS);

11 “(VIII) the Reengineered Natu-  
 12 ralization Applications Casework Sys-  
 13 tems (RNACS); and

14 “(IX) the Refugees, Asylum, and  
 15 Parole System (RAPS).”; and

16 (4) by adding at the end the following:

17 “(v) ANNUAL REPORT.—Not less fre-  
 18 quently than once each fiscal year, the Sec-  
 19 retary of Homeland Security shall submit  
 20 to the Committee on Foreign Relations  
 21 and the Committee on the Judiciary of the  
 22 Senate and the Committee on Foreign Af-  
 23 fairs and the Committee on the Judiciary  
 24 of the House of Representatives a report  
 25 describing the visa overstay rate for the



- 1 previous fiscal year of each country des-
- 2 ignated as a program country under para-
- 3 graph (1).”.

